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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. ~~875 - 889~~ 11-19

IN THE MATTER OF

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Debtor.

GROUP OF INSTITUTIONAL INVESTORS, AND MUTUAL SAVINGS BANK GROUP,

Petitioners,

vs.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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January 17, 1942.

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IN THE MATTER OF

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Debtor.

GROUP OF INSTITUTIONAL INVESTORS, AND MUTUAL SAVINGS BANK GROUP,

Petitioners,

vs.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioners are the Group of Institutional Investors, consisting of twelve life insurance companies[1] and the

1. The member companies of the life insurance group are the following:

Aetna Life Insurance Company.
John Hancock Mutual Life Insurance Company.
Metropolitan Life Insurance Company.
New England Mutual Life Insurance Company.
New York Life Insurance Company.
The Connecticut Mutual Life Insurance Company.
The Mutual Benefit Life Insurance Company.
The Mutual Life Insurance Company of New York.
The Northwestern Mutual Life Insurance Company.
The Penn Mutual Life Insurance Company.
The Prudential Insurance Company of America.
The Travelers Insurance Company.

Mutual Savings Bank Group, consisting of one hundred and fifty savings banks.[1] These interests own securities of the debtor, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, in the principal amount of approximately $89,000,000.

Petitioners respectfully pray that a writ of certiorari issue to review the judgments of the United States Circuit Court of Appeals for the Seventh Circuit entered in this cause on December 4, 1941, reversing the order of the District Court for the Northern District of Illinois which had approved the plan of reorganization for the debtor certified by the Interstate Commerce Commission, and remanding the proceeding to the Commission.

1. The savings banks which comprise this group are represented by a committee consisting of the following institutions:
Central Savings Bank.
Emigrant Industrial Savings Bank.
Institution for Savings in Roxbury.
Lynn Institution for Savings.
Philadelphia Saving Fund Society.
Savings Banks Trust Company.
Seamen's Bank for Savings.
Society for Savings.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

(a) Nature of the Proceeding.

This railroad system, which embraces more than eleven thousand miles of line lying within the middlewestern states and extending to the north Pacific coast, filed its petition for reorganization under Section 77 of the Bankruptcy Act (11 U. S. C. A. Sec. 205) on June 29, 1935, six and a half years ago. Pursuant to Section 77(d) public hearings were held by the Interstate Commerce Commission. The hearings were conducted by a member of the Commission, the Director of its Bureau of Finance, and an attorney Examiner on August 5, 6, and 7, 1935; June 16, 1937; September 20, 1937; February 1, 2, 3 and 4, 1938; and March 21 and 22, 1938. The record before the Commission consisted of the transcript of the oral testimony of witnesses at those hearings numbering 1,666 pages, 219 statistical exhibits submitted by the parties, and a number of comprehensive studies prepared by the Commission's Bureaus of Valuation, Finance, and Accounts.

The parties filed several sets of briefs before the Commission. On November 5, 1938, the Commission's Examiner issued a proposed report on a plan of reorganization. (R. 1162-1239.) Oral arguments were heard by the entire Commission on April 12, 1939. The initial report and order of the Commission approving a plan of reorganization were issued on February 12, 1940. (R. 1258-1283; 2153-2269.) Petitions for modification of the plan were filed on behalf of numerous parties, and answers were filed to those petitions. On June 4, 1940, the Commission issued a supplemental report and order by which

it modified the plan in certain respects and, as modified, approved and certified the plan to the District Court. (R. 1284-1317; 1319-1347.)

The District Court held hearings on objections to the plan and on the claims for equitable treatment in respect thereto on September 4, 5, 6, 9, 10, 11, 12 and 13, 1940. Voluminous oral and documentary evidence was introduced before the court in addition to the record made before the Commission, and the matter was extensively argued by counsel. On October 21, 1940, the District Court approved the plan in a comprehensive opinion. (R. 1857-1899.) The court's findings of fact, conclusions of law and order approving the plan were entered on November 13, 1940. (R. 1978-1992.)

The present capitalization of the debtor and the new capitalization and distribution under the plan of reorganization certified by the Commission and approved by the District Court are shown in the table attached to the Commission's Supplemental Report (R. 1317), which for convenience is reprinted on the opposite page.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY REORGANIZATION

(Appendix to Commission's Supplemental Report, R. 1317)

	Present Obligations and Stock			Approved Plan as modified						
	Principal Amount	Interest accrued to Dec. 31, 1938 and not authorized to be paid	Total	Undisturbed or Extended	First Mortgage Bonds	General Mortgage 4½% Bonds Series A	General Mortgage 4½% Bonds Series B convertible	5% Preferred Stock	Common Stock No-par Value shares	
					(4% interest except Terre Haute bonds)					
Equipment obligations	$ 33,322,999	$	$ 33,322,999	$33,322,999	$	$	$			
					(100%)					
R. F. C. loans	12,920,463		12,920,463(a)		$11,947,164					
Note to Cont. Ill. Nat. B'k & Trust Company	1,184,000		1,184,000	1,184,000						
Terre Haute bonds:										
So. Ind. Ry. 4s, 1951	7,287,000		7,287,000		7,287,000)					
Bedford Belt Ry. 5s, 1938	250,000		250,000		250,000)					
T. H. first & ref. 5s, 1960	8,056,000		8,056,000		8,056,000)	See Note.				
T. H. income 5s, 1960	6,336,000		6,336,000		6,336,000)					
					(70%)	(30%)				
Mil. & Nor. R. R. bonds:										
First mtg. 4½s, 1939	2,117,000	103,204	2,220,204		1,554,143	666,061				
					(25%)	(35%)	(20%)	(20%)		
Consol. mtg. 4½s, 1939	5,072,000	247,260	5,319,260		1,329,815	1,861,741	1,063,852	1,063,852		
General Mtg. bonds, 1989:					(25%)	(35%)	(20%)	(20%)		
Series A, 4s	48,241,000	5,653,090	53,894,090		13,473,523	18,862,931	10,778,818	10,778,818		
Series B, 3½s	8,950,000	920,211	9,870,211		2,467,553	3,454,574	1,974,042	1,974,042		
Series C, 4½s	42,597,000	5,652,191	48,249,191		12,062,298	16,887,217	9,649,838	9,649,838		
Series D, 4½s	24,000,000	3,217,320	27,217,320		6,804,330	9,526,062	5,443,464	5,443,464		
Series E, 4½s	15,000,000	2,137,381	17,137,381		4,284,345	5,998,083	3,427,476	3,427,476		
							(15%)	(60%)	(25%)	
50-yr. mtg. 5s, 1975	106,395,096	20,835,706	127,230,802				19,084,621	76,338,481	318,077	
Convert.—Adjust. mtg. 5s, 2000	182,873,693	79,550,055	262,423,748						1,749,492	
									39,163(c)	
									(25%)	
Gary first mtg. 5s, 1948	3,000,000	562,560	3,562,500					(75%) 2,671,875	8,906¼	
					5,000,000	(Assumed amount of new money bonds issued in reorganization. Interest assumed at 4%.)				
Unsecured claims (9/30/37)	445,162		445,162							
Total debt	508,047,413	118,878,918	626,926,331						15,837(d)	
Preferred stock	119,307,300			No equity						
Common stock, no-par value	1,174,060 shs. (b)			No equity						
Totals, New Company				34,506,999	58,923,171	57,256,669	51,422,111	111,347,846	2,131,475¼	
Terre Haute					21,929,000	(See Note)				

SUMMARY

	Principal Amount	Annual Charges
Equipment obligations, to be assumed; maturities to be rearranged in part	$ 33,322,999	$ 1,286,000
Bank note, undisturbed	1,184,000	23,680
First Mtg. bonds of new company	58,923,171	2,356,927
New Terre Haute bonds; portion representing fixed interest	15,350,300	603,047
Total fixed int. debt	108,780,470	4,269,654
Adds.—Betts. fund; mandatory payment		2,500,000
Gen. mtg. 4½% income bonds of new company	108,678,780	4,890,545
New Terre Haute bonds, portion representing contingent interest	6,578,700	328,935
Total system debt	224,037,950	
Sinking fund, approx.		543,394
Charges ahead of dividends		12,532,528
New 5% preferred stock	111,347,846	5,567,392
New no-par common stock, shown at $100 a share	213,147,525	
	548,533,321	

Percent of debt to total capitalization—40.8

Note: These items, strictly not a part of the capital structure of the new company, are included here since, under the plan, the new company will assume obligation with respect to principal and interest of the four classes of Terre Haute bonds, if the terms thereof are modified as provided in the plan. Such modification includes the provision that the bonds will bear fixed interest at the rate of 2.75 percent and contingent interest at the rate of 1.5 percent per annum.

(a) Reflecting repayment of $290,000 Jan. 3, 1939. Further reduced for purpose of the plan by crediting $973,299 cash in hands of first and refunding mtg. trustee Dec. 29, 1938, leaving $11,947,164 to be discharged by issue of new securities.

(b) Not including capital stock of the Terre Haute. Of such stock 1,259 shares are not owned by the Milwaukee.

(c) Additional common stock assigned on basis of free assets.

(d) Other additional common stock issued on the basis of free assets; to be issued to holders of unsecured claims as provided in the plan.

Various creditors, and the debtor and others on behalf of the stockholders, appealed from the order approving the plan to the Circuit Court of Appeals, and this petition for a writ of certiorari is from the order entered by that court on December 4, 1941, remanding the proceeding to the Commission.

(b) The Primary Issue.

In the plan of reorganization, duly certified to the court, the Commission in specific and categorical terms defined the treatment which it found to be fair and equitable for every interest, and in accompanying reports consisting of 144 pages the Commission stated the basis for its conclusions in fact and in law, fully complying, we think, with every legal requirement of Section 77, and with the specific mandate of the statute that "the Commission shall state fully the reasons for its conclusions." (Section 77 (d).) The District Court, in approving the plan certified by the Commission, held that it was supported by the evidence and that it was in all respects a lawful plan. (R. 1985, 1986.)

The Circuit Court of Appeals sustained the Commission's finding that the stock is without value and held that any different finding would not have been supported by the evidence. (R. 2309-11.) On Motion to Modify Opinion, the court further held on January 12, 1942:

> "Now, to make our position entirely clear, we add this memorandum and hold that the finding of the I. C. C. as to absence of value of old common and preferred stock, is specific, definite and certain, and fully meets the rule which requires finding on values of assets.
>
> "Second, we meant to hold, and do hold, that the evidence supports this finding, that there is no value to either the common or preferred stock of debtor * * *." (R. 2335.)

The Circuit Court of Appeals held that "The plan as

such, ignoring the absence of findings, has support in the evidence. It violates no requirements (save findings) announced in the Consolidated Rock Products case." (R. 2312.) At another point it referred to "the full and complete story" found in the report of the I. C. C. and in the opinion of the District Court. (R. 2299.) The court also stated:

> "* * * It may be observed that in our opinion there is evidence in the record to support the plan as proposed, but it cannot receive final approval until and unless there are findings made upon such evidence, and then the parties interested may have the right to review both the sufficiency of the findings to support the plan and the existence of evidence to support the findings." (R. 2314.)

In view of its conclusion that the evidence supported the plan the court expressed reluctance that it must reverse the District Court's order approving the plan, but deemed it necessary to do so under its interpretation of the *Consolidated Rock Products* case. The court seemed to interpret that case as setting up a technical requirement that a formal finding of fact be made on each step in the process of reasoning which impelled the Commission to its conclusions. The court said:

> "We appreciate that the findings of fact must, in the last analysis, be based upon evidence, much of which is to be found in the report of the I. C. C. * * * Reluctant as we are to do so, we nevertheless feel that under the decision of this controlling case, there must be a return of the cause to the District Court with directions to the District Court to return it to the I. C. C., and for that body to make the findings on issues vital to the question of values and equities as announced in said Consolidated Rock Products case." (R. 2315.)

The court also decided that the provision in the plan for an Additions and Betterments Fund for the reorganized company, which was decided upon by the Commis-

sion after full consideration of the needs of the property, must be disapproved for lack of findings to "support both the allowance and the amount of the allowance." (R. 2313.) This decision was made despite the fact that the court found that the evidence "would amply warrant an allowance for such an item, and also the amount adopted by the Commission." (R. 2313.)

The court did not refer to the detailed and comprehensive findings which the Commission made as to the earnings, the capitalization of such earnings, and elements of physical value, both of the system as a whole and of each mortgage division.

The Circuit Court of Appeals has interpreted the *Consolidated Rock Products* case as requiring that as an essential to railroad reorganization the Commission enter upon the tortuous task of determining the single sum value, in dollars and cents, of each of the debtor's many mortgage divisions and of the new securities to be issued under the plan. We believe that there is nothing in the *Consolidated Rock Products* decision to support that view. Congress well knew that the most difficult and time-consuming undertaking ever imposed upon the Interstate Commerce Commission had been its work under the Valuation Act of 1913, which directed the Commission to make valuations of the railroads. (37 Stat. 701.) Sharfman, in his treatise, *The Interstate Commerce Commission*, states, for example, that "the magnitude and difficulty of the undertaking are clearly evidenced by the fact that the valuation work, begun in 1913, was, in 1930, still incomplete." Vol. I, pp. 118-119. The magnitude and difficulty of the task will be multiplied many fold if the Commission must now make such single sum valuations for each of the many integrated mortgage divisions of this property which is operated as a single system. This Court has found that Congress intended, by the enactment of Section 77, to pro-

vide for the expeditious reorganization of bankrupt railroads by avoiding the delays incident to the equity receivership practice. In *Continental Bank* v. *Rock Island R. Co.*, 294 U. S. 648, the Court said:

> "The delay and expense[1] incident to railroad receiverships and foreclosure sales constituted, probably, the chief reasons which induced the passage of § 77; and to permit the perpetuation of either of these evils under this new legislation would be subversive of the spirit in which it was conceived and adopted." (p. 685.)

The interpretation of the statute adopted by the Circuit Court of Appeals would open the door to almost endless litigation over the numerous specific valuations which it would require.

The length of the Commission's reports makes it impossible in this petition and the accompanying brief to restate all of its findings. The summary contained in the attached brief in support of this petition demonstrates, we believe, that the Commission's findings amply meet any reasonable test and that its reports are of exactly the character which Congress directed it to issue in Section 77 proceedings.

Opinions Below.

The reports and orders of the Interstate Commerce Commission are reported at 239 I. C. C. 485 and 240 I. C. C. 257. (Original Report, R. 2153-2269, and Order, R. 1258-1283; Supplemental Report, R. 1284-1317, and Order, R. 1319-1347.) The opinion of the District Court is in 36 F. Supp. 193. (R. 1857-1899.) The opinion of the Circuit Court of Appeals has not yet been reported. (R. 2297-2317, 2334-35.)

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1. The delay and expense which Congress sought to avoid is detailed in *Rodgers and Groom, Reorganization of Railroad Corporations*, 33 Col. L. Rev. 571, notes 1 and 2 (1933). The average duration of equity receiverships for railroads over 1,000 miles in length is there stated as in excess of four years. By comparison, this proceeding was begun six and one-half years ago and will inevitably consume much more time.

Jurisdiction.

The judgments of the Circuit Court of Appeals were entered on December 4, 1941. (R. 2318-2324.) The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925. (28 U. S. C. A. Sec. 347.)

Statutes Involved.

The issues involve the construction and application to the facts of this case of Section 77 of the Bankruptcy Act (11 U. S. C. A. 205). The most pertinent provisions of that statute are reproduced as an appendix, *infra*, pp. 57-63.

QUESTIONS PRESENTED.

1. Does the *Consolidated Rock Products* case require that a plan of railroad reorganization, which is supported by the evidence, which values the claim of every creditor in terms of new securities and is accompanied by reports fully setting forth the Commission's reasons for its conclusions, be disapproved for lack of a number of more specific determinations of value?

2. When the Commission has determined that an Additions and Betterments Fund must be established, to enable the property to perform its public function, and upon a full review and consideration of the experience and anticipated needs of the carrier has prescribed the amount of such fund, and the court has found that "there is evidence that would amply warrant an allowance for such an item, and also the amount adopted by the Commission" (R. 2313) must there be further findings "which support both the allowance and the amount of the allowance"? (R. 2313.)

3. Where the Commission has certified a plan of reorganization to the court as fair and equitable, together with reports finding the amounts and character of the various claims, the security therefor, the earning power and physical value of the property as a whole and by mortgage divisions, and the court holds that the evidence in the record supports the plan, must the plan be disapproved and the reorganization proceeding be remanded to the Commission for the purpose of fixing "values" of each mortgage division or for any other more specific findings?

4. Should the District Court's order approving the Commission's plan of reorganization of the Milwaukee Road be affirmed?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

(1) The Circuit Court of Appeals has decided an important question of federal law arising in the administration of Section 77 of the Bankruptcy Act which has not been, but should be, settled by this Court. It is of the utmost importance that there be a prompt and authoritative determination as to whether a plan of reorganization which has been approved by the Interstate Commerce Commission in comprehensive reports fully stating "the reasons for its conclusions" (Sec. 77(d)), and which has support in the evidence, as both the District Court and the Circuit Court of Appeals have found, may nevertheless be disapproved and sent back to the Commission for a more specific determination of values than was made here. Any statement purporting to find in dollars and cents the value of the various integral parts of the debtor's property, constituting as it does a single integrated system of railroad, would merely give to the Commission's conclusions an appearance of precision which, in fact, they could not achieve. Moreover, the history of the valuation proceedings before the Commission under Section 19(a) demonstrates that any effort to arrive at such specific values for the many mortgage segments of the property under reorganization would so enlarge the material for controversy and so extend the proceedings as to make the statute unworkable. The importance of the question transcends this proceeding, for the decision affects the validity of *all* of the Commission's reports so far made in approving plans of reorganization for numerous other railroads, large and small, making up, in part, the 72,743 miles of railroad (29.5

per cent of the country's entire railroad mileage) in receivership or trusteeship.[1] Very similar questions arise also in the many proceedings now pending under Section 11 of the Public Utility Holding Company Act (15 U. S. C. A. 79k). No case has been decided by this Court on appeal from an order approving or disapproving a plan of reorganization under Section 77 of the Bankruptcy Act. Unless this Court now determines the extent of the duties of the Commission and of the lower courts under Section 77, the delay and additional labors involved in a continuation of all of the Section 77 proceedings before the Commission may eventually prove to have been either futile or misdirected.

(2) The Circuit Court of Appeals has misinterpreted the decision of this Court in *Consolidated Rock Products Co.* v. *Du Bois*, 312 U. S. 510, and has proceeded in conflict with that decision by requiring that the detailed findings of the Commission be made even more specific, although the evidence was held to support the Commission's conclusions. Such an interpretation unnecessarily multiplies the difficulties, delays and expenses that attend all reorganization proceedings, both of railroads and other corporations.

(3) The public interest will be promoted by a decision on the merits, authoritatively settling the contentions by which the junior interests have so greatly delayed this and similar proceedings.

WHEREFORE your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Seventh Circuit, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all of the proceedings in the cases numbered on its docket Nos. 7590, 7610.

1. I. C. C. 55th Annual Report, p. 14 (as of July 31, 1941).

7617, and entitled "In the Matter of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor; Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Appellant, *vs.* Group of Institutional Investors, etc., *et al.*, Appellees (And Consolidated Appeals)," and that the judgments of the Circuit Court of Appeals for the Seventh Circuit may be reversed and the decision of the District Court affirmed and that your petitioners may have such other and further relief in the premises as to this Court may seem proper.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

A statement of the case has been given in the petition (pp. 3-7), and, to avoid duplication, is not repeated.

SUMMARY OF ARGUMENT.

I.

A review of the extensive findings made by the Commission shows that they are amply sufficient to enable the Court to perform its limited function under Section 77.

II.

The ruling below was not made necessary by the decision in the Consolidated Rock Products Case, but is inconsistent with that decision, and would defeat the purpose of Section 77.

III.

The ruling below would impose requirements on administrative action which are inconsistent with the statute and the decisions of this Court.

ARGUMENT.

I.

THE EXTENSIVE FINDINGS MADE BY THE COMMISSION ARE AMPLY SUFFICIENT TO ENABLE THE COURT TO PERFORM ITS LIMITED FUNCTION UNDER SECTION 77.

We believe that the Circuit Court of Appeals committed error of serious consequence in deciding that the findings of the Commission were insufficient. The court did not summarize or appraise the weight of the very extensive findings which were made by the Commission with respect to the value and earning power both of the property as a whole, and of each of the several mortgage divisions. Instead, the court observed that the Commission's findings were made prior to this Court's decision in the *Consolidated Rock Products* case and held that further findings are called for by that decision. But the *Consolidated Rock Products* case did not arise out of the administration of Section 77 by the Interstate Commerce Commission, and thus did not involve the validity of action by the agency "specially charged with the public interest represented by the transportation system."[1] The fundamental error of the court below is that it overlooked what is so clearly stated by this Court in respect to the intent of Section 77 in *Palmer* v. *Massachusetts*, 308 U. S. 79, 86-87 (1939), in which this Court said:

> "Until the amendment of March 3, 1933, railroads were outside the Bankruptcy Act. But the long history of federal railroad receiverships, with the conflicts they frequently engendered between the federal courts and the public, *left an enduring conviction that a railroad was not like an ordinary insolvent estate*,

1. *Palmer* v. *Massachusetts*, 308 U. S. 79 (1939).

Also an insolvent railroad, it was realized, required the oversight of agencies specially charged with the public interest represented by the transportation system. Indeed, when, in the depth of the depression, legislation was deemed urgent to meet the grave crisis confronting the railroads, there was a strong sentiment in Congress to withdraw from the courts control over insolvent railroads and lodge it with the Interstate Commerce Commission. Congress stopped short of this remedy. But the whole scheme of Section 77 leaves no doubt that *Congress did not mean to grant to the district courts the same scope as to bankrupt roads that they may have in dealing with other bankrupt estates.*

"The judicial process in bankruptcy proceedings under Section 77 is, as it were, brigaded with the administrative process of the Commission. From the requirement of ratification by the Commission of the trustees appointed by the Court to the Commission's approval of the court's plan of reorganization the authority of the court is intertwined with that of the Commission."[1]

As this Court there held, the courts do not have "the same scope as to bankrupt roads that they may have in dealing with other bankrupt estates." Full scope must be given to the duty and function of the Interstate Commerce Commission which of necessity creates a sharp distinction between Section 77 and Section 77B or Chapter X of the Bankruptcy Act.

Congress expressly stated in Section 77(d) that the kind of report it intended the Commission to make was one in which "the Commission shall state fully the reasons for its conclusions." The lower court did not hold that the Commission had failed to comply with this statutory direction, and, we submit, the Commission's reasons for its conclusions are fully stated in the reports in this case.

1. All italics in this brief are added.

There is no authority for any further requirement in the administration of the statute.

We desire to show, moreover, by a review of the substantive findings embodied in the Commission's reports, that they fully meet the requirements which this Court has laid down in respect to "an ordinary insolvent estate"[1] like that undergoing reorganization in the *Consolidated Rock Products* case. Only a summary of the Commission's findings is feasible in this brief; the full statement of the findings and the Commission's "reasons" for its approval of the plan is contained in its reports[2] which appear in the Record at pages 2153 to 2269 and 1258 to 1283 (the original report and order) and pages 1284 to 1347 (the supplemental report and order).

We do not refer in this summarization to any of the very extensive testimony and exhibits introduced before the Commission in the several years during which hearings were held before it. Similarly, we do not discuss here the voluminous evidence offered in the hearings before the District Court by certain parties, nor the thoroughgoing opinion of the District Court on the various features of the plan (R. 1857-1899), nor the findings of fact and conclusions of law of the District Court. (R. 1978-1992.) *The only record references in the following discussion are to the two reports of the Commission itself, with the addition of the report of the Commission's Bureau of Valuation on the elements of physical value which the Commission ordered incorporated in the record* (R. 542, 544) *and which, as will be shown, is repeatedly referred to in the Commission's final reports.*

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1. *Palmer* v. *Massachusetts*, *supra*.

2. These reports, the Commission stated in its original and supplemental orders, contain "its findings of fact and conclusions thereon, and a full statement of the reasons for its conclusions * * *." (R. 1258, 1319.)

The Commission considered in great detail the earning power of the debtor's property and all other factors having a bearing upon the reasonable value of the property. In so doing, the Commission gave due consideration to the elements of physical value, but, as will be seen from the summary, gave predominant weight to earning power. In its decision in the *Consolidated Rock Products* case this Court said: "The criterion of earning capacity is the essential one if the enterprise is to be freed from the heavy hand of past errors, miscalculations or disaster, and if the allocation of securities among creditors is to be fair and equitable." (312 U. S. 510, at 526.) With earning power as the essential criterion, the Commission determined the maximum permissible capitalization of the reorganized company, found that the debtor's stock had no value, that the unsecured creditors were entitled to participate only to the extent of the free assets, and that the junior mortgagees, holders of Convertible Adjustment bonds, were entitled only to limited participation.

In the following review for the purpose of a complete showing, we shall discuss, first, the findings and conclusions of the Commission with regard to the value of the property as a whole, then we shall summarize the findings supporting the Commission's provision for an Additions and Betterments Fund, and finally, we shall consider separately the findings and conclusions with respect to each mortgage.

A. The Debtor's Property as a Whole.

The properties of the debtor were described at the outset of the Commission's original Report. (R. 2162, *et seq.*) These properties were found to have an original cost of $694,263,606, cost of reproduction new, $818,280,465, cost of reproduction less depreciation, $546,341,054, value of lands and rights, $78,259,228, and working capital, $7,727,

300. (R. 2164.) Corresponding elements of physical value were found for each mortgage division and for the Terre Haute, a line leased by the debtor.

The Commission then turned to the earning power of the property and stated the results of the elaborate studies of the debtor's traffic, past, present and prospective, including the average annual tonnage of the various commodities for five separate periods in the years from 1921 through 1936, and the freight and total revenues for each year, 1927 to 1934. (R. 2176.) It then considered the kinds of commodities in which traffic had recovered from the depression and the kinds in which the losses were most pronounced, found and stated the passenger revenues and their trend over the period, 1921-1937 (R. 2177), and discussed the events leading to bankruptcy. (R. 2177-2178.) Detailed findings were made as to the operating revenues and expenses in 1934, 1935, 1936, and 1937, and the estimates for 1938. (R. 2178, 2179.) The physical condition of the property with reference to maintenance and efficiency of operation was carefully analyzed. (R. 2179.) The income available for payment of interest in each of the years 1921 to 1938 was stated, both as reported by the carrier and as adjusted in the manner described by the Commission. (R. 2180, 2181.) It then considered the estimates of future taxes, the effect of emergency freight charges, and the reductions in wages and salaries paid by the debtor. (R. 2181.) Later in the report, the Commission, on the basis of the foregoing factors, and after discussing certain proposals, made this finding as to the amount of fixed charges which could be borne by the reorganized company:

> "If fixed interest charges be limited to about $4,269,654 and the mandatory payment to the fund to $2,500,000 a year, the total, $6,769,654, would be covered about 1.16 times by the average earnings of the period 1931-35 and 1.18 times for the period 1932-36. In 1932, 1935, and 1938 such an amount was not earned. While 1939

shows an improvement in earning power, we would regard any increase in the foregoing charges as hazardous. Between the clear demands of a conservative policy in the present reorganization and the claims and rights of the first-lien bondholders, we conclude that the limitation of fixed charges of the system at approximately $4,269,654 a year is reasonable and proper. We find that there will be adequate coverage of such amount of fixed charges of the new company by the probable earnings available for the payment thereof." (R. 2219.)

Similar consideration was given the rest of the new capital structure. The conclusion was as follows:

"Considering the past and prospective earnings of the debtor and all other relevant facts, and the public interest, we are of the opinion and find that the total capitalization of the new company should not exceed approximately $108,780,470 of fixed-interest debt, $115,257,480 of contingent-interest debt, $108,675,971, par value, of preferred stock, and 2,158,194 shares of common stock, having no-par value. Taking the common stock at $100 a share, the approximate maximum capitalization would thus be $548,533,321. Total fixed-interest charges will approximate $4,269,654, and total interest charges $9,489,134 per annum. Including the mandatory payment to the capital fund and a sinking fund for the retirement of bonds, the charges ahead of dividends on the new preferred stock will be about $512,532,528 [$12,532,528 in original] per annum. Giving effect to full 5 percent dividends on the preferred stock the charges ahead of dividends on the common will be about $17,966,326 per annum." (R. 2218-2219.)

The Commission thus determined the value of the property as a whole for the purpose of the reorganization proceeding. There was no requirement that the Commission explicitly label this finding as a finding of value. Similarly, in *R. R. Commission* v. *P. G. & E. Co.*, 302 U. S. 388, 400 (1938) the state commission's fixing of a rate base was held to be a sufficient finding of fair value for the purpose

there at issue, *i. e.*, the fixing of reasonable rates. The Court there said:

> "The contention that the Commission failed to find the fair value of respondent's property presents substantially the same question in another form. What the Commission found appears by its own opinion. The court below was bound to go to that opinion to ascertain the Commission's findings. The Commission specifically found what it considered to be the rate base. 39 Cal. R. Com., p. 76. The Commission found that rate base to be reasonable. *Id.*, p. 77, note. *The import of its opinion is that the rate base represented the Commission's conclusion as to the value which should be placed upon respondent's property for the purpose of fixing rates.* It was upon that valuation that the Commission distinctly ruled that the rates it established would 'assure the Company a fair return on its properties.' Respondent was entitled to contest the value thus placed upon its properties, or any part of them, to insist that the value taken as the rate base was too low, and that in consequence the prescribed rates were confiscatory. That was the issue upon which the court below should have passed. But respondent cannot successfully contend that it was not heard by the Commission, that the evidence respondent offered was not received and considered, and its competency and weight determined by the Commission, or that the Commission did not place its valuation upon the property and fix the rates upon the basis of that valuation. Respondent utterly fails to show that in the procedure of the Commission it was denied due process of law." (pp. 400-401.)

It may be noted that the Circuit Court of Appeals said its "present conclusion is that the record supports the new plan as far as the amount of indebtedness which this railroad will bear is concerned." (R. 2313.) It also commended the simplified capital structure which the Commission has set up.

The earnings record and earnings prospect of the debtor were again reviewed in detail by the Commission in con-

nection with its finding that the equity of the present stockholders is without value. (R. 2258-2260.) This finding was approved by the Circuit Court of Appeals. (R. 2311, 2334-35.)

B. The Additions and Betterments Fund.

The Commission's plan provides that there shall be created an Additions and Betterments Fund for purposes which are specified in detail, into which shall be made certain annual payments. The treatment of this provision by the Circuit Court of Appeals is illustrative of its opinion, and, we believe, forcefully demonstrates the error in its conception of *Palmer* v. *Massachusetts* and the *Consolidated Rock Products* case. The entire discussion of the Additions and Betterments Fund by the Circuit Court of Appeals was as follows:

> "The serious attack made on that portion of the plan which calls for the mandatory payment of $2,500,000 into the Additions and Betterments Fund, calls for no extended discussion. Counsel contend that the sum is excessive and unfair and does not affect all security holders equally. We think otherwise.
>
> "While there must be more fact findings upon which to reach a final conclusion on this, as well as the other phases of the plan, we believe the Commission is entirely sound in its position that a fund for Additions and Betterments should be created. In fact we find few things in the plan which appeal stronger than this provision.
>
> "Failure to provide against financial and commercial storms and other adversities which affect railroads, like other industries, accounts for much of the condition of the railroads today. The possible avoidance of such recurrence will be aided by this or a similar provision. It would be improper to pass directly upon the reasonableness of the amount, however, until the findings which must be made are before us. However, we may say that there is evidence that would amply warrant an allowance for such an item, and also the

amount adopted by the Commission. But findings there must be, based on the evidence, which support both the allowance and the amount of the allowance." (R. 2313.)

In most specific terms the Commission had found that there should be an Additions and Betterments Fund and had found the amount necessary for the Fund. The Circuit Court of Appeals determined that the sum was not excessive or unfair. Nevertheless, the court felt itself constrained by the *Consolidated Rock Products* case to reverse the District Court's approval of the plan and to remand the proceedings back to the Commission for further findings of fact. We submit that such a view of the administrative process conceived and provided by the Congress to effectuate the reorganization of the railroads is erroneous. Such an interpretation of the statute would be a severe blow to the entire administrative machinery of the government.

The findings and conclusions of the Commission as to the Additions and Betterments Fund are more than adequate, as a brief survey will show.

The Commission first summarized the terms proposed by the parties for the Fund, and the debtor's showing of the annual charges to additions and betterments each year from 1928 to 1937, together with a statement of the cash obtained each year from equipment depreciation charges, road retirements, and salvage, and the testimony as to future needs of the property. (R. 2192, 2203.) On the basis of the full consideration of the subject the Commission stated:

> "It appears that the committee considers that approximately $10,700,000 of cash will be available annually for the additions and betterments fund and the reserve and retirement fund, such amount including retirements, salvage, and depreciation on equipment, while the debtor estimates its average capital requirements for the next five years at about $12,900,000 a year, leaving $2,200,000 or more,

> which, if the expenditures were not curtailed, would have to be financed by the issue and sale of new securities. Testimony for the debtor tends to support the foregoing estimate of future requirements but in such a matter exactness cannot be expected. We think that the situation will be met by the provisions for the additions and betterments fund hereinafter made, by which the contributions to the fund in respect of any income period will be part mandatory and part in the discretion of the management." (R. 2223.)

Thereafter the Commission stated in specific detail the terms of the Additions and Betterments Fund approved by it. (R. 2237-2241.)

In the supplemental report the Commission again reviewed the evidence of the needs of the property, and made a change in the provision for the payments into the fund. (R. 1287-1292, 1293-1294.) We direct particular attention to the Commission's lengthy statement of its findings and conclusions on this subject on page 1289 of the record.

These many findings based upon a painstaking consideration of the evidence and the reasons for an Additions and Betterments Fund and the terms thereof were not referred to by the Circuit Court of Appeals. We submit the report of the Commission meets the requirement of the statute that "the Commission shall 'state fully the reasons for its conclusions" and that the holding of the court that the Commission should include in its report "more fact findings upon which to reach a final conclusion on this" would serve no useful purpose but would frustrate the practical operation of the statute.

C. The R. F. C. Claim and Its Collateral, Including the First and Refunding Bonds and the Bellingham Bay Bonds.

The Circuit Court of Appeals referred to the R. F. C. claim of $10,780,762 as being one of "a few minor items of indebtedness" which "are not exactly small, but over their disposition little or no controversy exists." (R. 2305.) The claim is heavily secured by the pledge of $11,212,000 General Mortgage bonds, all but $285,000 of the entire issue of First and Refunding Mortgage bonds (in the amount of $8,950,000), and the assignment of the debtor's advances to the Chicago Union Station Company in the amount of $3,110,861. (R. 2173.) There are also pledged the small issue of Bellingham Bay bonds, amounting to only $301,000. The plan allots new first mortgage bonds to the R. F. C. and provides for cancellation of the pledged bonds.

The Circuit Court of Appeals stated, with reference to the First and Refunding Mortgage bonds which constitute part of the R. F. C. collateral: "No challenge of the plan is made so far as it affects this mortgage." (R. 2304.) The court made no reference to the other collateral, with the sole exception of the small Bellingham Bay item.

As to that single item of R. F. C. collateral, the court held that the Commission must make additional findings. (R. 2314.) The court did not state any reasons for this conclusion. It made no suggestion as to how any additional findings concerning this smallest piece of R. F. C. collateral could possibly affect the treatment of the R. F. C. claim. It did not refer to the fact that the Commission had held that the other collateral was of such value that the treatment of the R. F. C. was proper even without regard to the Bellingham bonds. (R. 2246, 2247.) We submit that it would serve no useful purpose to require the

Commission to make any additional findings as to the Bellingham bonds.

Even though the treatment of the Bellingham issue was of no practical consequence, the Commission considered it briefly. It found that it had matured December 1, 1932, and was secured by a first mortgage on 67 miles of line in the State of Washington and on a small amount of equipment. (R. 2172.) The I. C. C. Bureau of Valuation Report, Sheet 1, shows that there are 13 units of equipment subject to the first lien of this mortgage, that the original cost was $2,120,273, the cost of reproduction new, $2,501,603, the cost of reproduction less depreciation, $1,773,102, and the value of lands and rights, $289,356. The Commission found that these Bellingham bonds should be cancelled in the reorganization.

As an overall finding regarding the R. F. C. and its collateral, the Commission found "that the margin of security for these loans is unusually large." (R. 2247.) The foregoing findings were not referred to by the Circuit Court of Appeals. Further findings as to the Bellingham Bay bonds would be of only academic interest, especially since neither the court nor any of the parties has questioned the fairness of the allocation to the relatively small R. F. C. claim of new first mortgage bonds for 100% of its claim. The declaration of the Circuit Court of Appeals that even in such a situation the *Consolidated Rock Products* case requires the making of more findings by the Commission illustrates the error of construction of the statute and the decisions of this Court into which the Circuit Court of Appeals has fallen.

D. The General Mortgage Bonds.

The Circuit Court of Appeals considered the objections of certain General Mortgage bondholders to the plan and concluded:

> "Accepting, as we do, the necessity for a drastic reduction in indebtedness and interest requirements and realizing that each of these divisions, to a certain extent, depends upon the existence and business of other branches of the system, *we are unable to say the evidence fails to establish the fairness of the plan so far as these bonds are concerned.*
>
> "If the proposition were an original one, it is true, we can readily see how a larger percentage of the new plan first mortgage bonds might have been given to holders of the General Mortgage bonds. On the other hand, while there is a difference in the priorities of the first mortgage bonds and the Series A bonds of the new issue, this may be made up in increased interest rates of the new bonds, especially if the increased revenues of the company, as disclosed during the year 1941, are maintained even in part. There is, however, in our opinion, a serious question presented due to the small percentage (25%) of the First Mortgage bonds given to the holders of old General Mortgage bonds. Our suggestion is that if any revision should be made, this percentage might be increased and the percentage of Series B and preferred and common stock, reduced." (R. 2312-13.)

The court thus concluded that the evidence supported the fairness of the treatment of the Generals, and merely suggested that if any change be made by the Commission, it might increase the amount of first mortgage bonds allotted to that issue. There is no other reference in the opinion to the treatment of the General Mortgage bonds unless the court's general comment at the end of the opinion may also refer to this issue.

The several series of General Mortgage bonds, their amounts, interest rate and maturity date were described

by the Commission at R. 2166-67. The Commission described the property subject to the first lien of this mortgage, including miles of road and number of locomotives, freight cars, passenger cars and work equipment. (R. 2167.) It found that there were no equipment deficiencies under this mortgage. (R. 2167.)

The Commission fully reviewed the history of the road, its traffic sources and density, and earnings. It also found that the original cost of this division was $392,703,461, cost of reproduction new $472,238,990, cost of reproduction less depreciation $290,636,520, and value of lands and rights $68,479,079. (R. 2215, 2250; I. C. C. Bur. of Valuation Report, Sheet 4.)

An earning study was made for the year 1936 (the latest year for which the necessary statistics were then available) in which net earnings were the best the property had experienced since 1930. (R. 2180.) The Commission found that in 1936 the earnings of the General Mortgage lines were $8,716,847, or $7,561,688 after deducting interest on equipment obligations. (R. 2250.) "The latter sum is 1.16 times interest charges on the general mortgage bonds, including the series G bonds pledged with the Finance Corporation." (R. 2250.)

> "Thus on the basis of income available in 1936 for payment of interest, stated above, the Northern's consolidated mortgage bonds are on a parity with the general mortgage bonds. * * *
>
> "We conclude that the holders of the debtor's general mortgage bonds and the holders of the Northern's consolidated mortgage bonds should be accorded similar treatment under the plan, * * *." (R. 2251.)

In view of the earnings of the property in the years of light traffic recently experienced, and like periods reasonably to be anticipated in the future,[1] and under the neces-

1. "A plan of reorganization within the meaning of this section * * * (4) shall provide for fixed charges (including fixed interest on funded debt, interest on unfunded debt, amortization of

sity of establishing a substantial charge against income for an Additions and Betterments Fund, the Commission found that it could safely prescribe an annual fixed charge for the entire system of only $4,269,654 (R. 1298, 2219) which is equal to about one-third the income for the year 1936 covered by the studies.

It has been noted that the Circuit Court of Appeals, after stating that it was unable to hold that the evidence did not support the treatment of the Generals, observed that if the plan were revised it would suggest that the Generals be allotted more of the fixed interest first mortgage bonds and less of the junior issues. It is entirely clear from the court's opinion as a whole, that it did not mean to imply that this road, twice bankrupt within seven years, should be burdened with a higher annual fixed charge than that established by the Commission. To follow the court's suggestion would require, therefore, that some other class of creditors which participate in the first mortgage bonds under the provisions of the plan, must suffer a corresponding reduction in their allotment. The court does not suggest what other allotment of the new first mortgage bonds might be reduced, and the findings of the Commission, supported by the record, show that the rights of the other creditors participating in the distribution of fixed interest securities are either equal or superior to those of the Generals. These are the holders of equipment trust certificates on the equipment necessary to operate the system, the Reconstruction Finance Corporation, a collateral noteholder whose treatment in the plan is not attacked by anyone, and the Milwaukee & Northern mortgages, one of which earns at approximately the same rate

discount on funded debt, and rent for leased railroads) in such an amount that, after due consideration of the probable prospective earnings of the property in light of its earnings experience and all other relevant facts, there shall be adequate coverage of such fixed charges by the probable earnings available for the payment thereof * * *." Section 77(b).

as the General Mortgage lines, and the other at a much higher rate. It was only after the most meticulous consideration of these claims independently and in relation to one another that the Commission made its allocation to each, stating fully the reasons for its conclusions as required by Section 77. The relationship between the Generals and the 5's of '75 is of no importance in this connection because the 5's do not participate in the first mortgage bonds.

A modification requested by the General Mortgage trustee, which would increase the fixed interest bonds allotted to the Generals, was refused by the Commission, which found that "any material changes in the distribution of the new securities would render the distribution less equitable from the standpoint of relative rights." (R. 1304, 1307.)

E. The Fifty Year Mortgage Bonds ("5's of '75").

The Circuit Court of Appeals discussed briefly the objections of certain holders of the debtor's bond issue known as the "5's of '75", and concluded:

> "Accepting the rule there announced [*i. e.*, in the *Consolidated Rock Products* case] for determination of value (to-wit, earning power) the *5's of '75 have, we think, no legitimate complaint.* Sec. 77(e) does not change our conclusion." (R. 2312.)

There was no further comment as to the 5's of '75 in the opinion, unless the general comment upon the need for more findings referred also to that issue.

This mortgage is a lien immediately junior to the lien securing the small issue of pledged First and Refunding Mortgage bonds. (R. 2172.) The Commission found that there were $106,395,096 of bonds issued under this 50-year mortgage, the interest requirements were $5,319,755 yearly, and there was accrued unpaid interest of $20,835,706 as of December 31, 1938. (R. 2172.)

The original cost of the property subject to the first

lien of the First and Refunding Mortgage was found to be $217,052,949, the cost of reproduction new, $252,468,812, the cost of reproduction less depreciation, $190,054.042; and the value of lands and rights, $7,929,980. (R. 2247; I. C. C. Bur. of Valuation Rept. on Elements of Value, Sheet 3.)

The Commission dealt at length with the most extensive and complicated earnings studies covering the lines subject to this mortgage (R. 2252) and considered in detail the issues which had been raised as to the computation of such estimates of earnings and their use with respect to the treatment of the 5's of '75. On the basis of this exhaustive consideration of the matter, the Commission held that the treatment proposed by the Examiner "would result in their participation with senior creditors when the system income available for interest exceeds $6,364,602, after payment of $2,500,000 to the additions and betterments fund. We do not consider such treatment of the 50-year bonds to be justified on any basis of earnings shown." (R. 2254.)

The Commission stated that under the treatment allotted the 5's of '75 in the approved plan:

> "* * * they will begin to share earnings with the general mortgage bonds and Northern consolidated bonds after $9,675,000 of prior charges * * *. We think that this treatment goes far toward resolving the doubts as to the accuracy or fairness of the allocation of earnings in favor of the 50-year bonds, without injustice to the general mortgage bonds. * * * We see no means by which the exact present lien position of the general mortgage bonds or the 50-year bonds can be preserved except under a prohibitive mortgage structure.
>
> "We conclude that the holders of the 50-year bonds should be entitled to receive the securities of the new company as provided herein, * * *." (R. 2254-2255.)

In the supplemental report the Commission again considered the earnings estimates and the earning power of the western lines. (R. 1305, 1307-1308.) It also said:

> "The elements of physical value referred to were before us, and were considered by us. * * * It is clear that in the light of the above described evidence as to earning power of the western lines, the same weight cannot be accorded the physical value of the properties as might be under conditions of higher earning power." (R. 1308.)

As stated above, it is not clear from the opinion that the court intended to criticize the Commission's findings as to this issue. If it did so intend, the holding, we believe, is unsound in the light of the Commission's extensive findings on the position of this mortgage.

F. The Convertible Adjustment Bonds.

These bonds have been issued in the principal amount of $182,873,693, carry a 5% interest rate, and mature January 1, 2000. The accrued and unpaid interest amounted to $79,550,055 as of December 31, 1938. (R. 2172.) They are secured by a lien on the same property as the 5's of '75 but immediately junior to that mortgage. (R. 2172.)

The Circuit Court of Appeals made no analysis of the Convertible Adjustment bonds, other than to state that more findings were necessary. (R. 2314.)

Since these bonds are a lien on virtually the entire system but subordinate to the other mortgages, the question as to them was largely whether the total permissible capitalization of the property was such that the satisfaction of the claims of senior creditors left anything for distribution to these bondholders.

The Commission's conclusions as to the Convertible Adjustment bonds were, in part, as follows:

> "As compared with the above-stated charges on the debt ahead of the adjustment mortgage bonds, the

system income available for interest, as adjusted by the committee, averaged $21,038,461 a year during nine predepression years 1921-29. During the succeeding nine years, 1930-38, the average was $9,571,180; and during the entire 18 years it was $15,304,822. In the discussion of stockholders' equity which follows we take the position that the peak earnings of one or two years in the past cannot be relied on as indicative of an earning power sufficient for a finding that the equity is of value. In the case of the adjustment mortgage bonds the situation is different in that the charges on all prior-lien debt were more than covered over a long period of time prior to the depression and are nearly equalled by the average earnings during the past 18 years, as well as by the earnings predicted for the future normal year. As compared with a debt of approximately $364,000,000 ahead of the adjustment mortgage bonds, the cost of reproduction of the system properties, less depreciation, plus the value of lands and rights, an allowance for working capital, and the net additions and betterments reported by the carriers in 1936 and 1937, was $662,759,838. We consider that the issue of new common stock to the adjustment mortgage bondholders, as proposed by the committee, is justified, but not in the amount proposed. The plan we approve advances the position of the adjustment mortgage bonds over that of the committee's plan since the charges ahead of the new common stock will be reduced by some $1,635,000 below those shown in the committee's plan, on the basis of a $2,500,000 additions and betterments fund in each case." (R. 2256.)

The Commission found that the above allotment of stock "will fail to satisfy the claim by $55,471,653. For this portion of their claim, these bondholders should be permitted to participate with other unsecured creditors in the free assets of the debtor." (R. 2257.) It also found: "This additional assignment, in respect of the debtor's free assets, is on the basis of approximately 0.7 share to each $1,000 of claim, and the same basis should be followed in

the treatment of all other unsecured claims allowed by the court." (R. 2257.)

The Commission analyzed the free assets, which consisted of the stock and notes of the Milwaukee Land Company. It stated the balance sheet accounts of that company and found that:

> "The company's income accounts for the five years 1932-36 show net deficits ranging between $331,956 in 1936 to $1,053,996 in 1934, with interest accruals slightly in excess of $600,000 a year. Considering the above indications of value we find that not exceeding 55,000 shares of new no-par-value common stock may be issued against the debtor's unpledged interest in the land company approximately on the basis of capitalization followed in establishing the new capital structure for the properties subject to mortgages." (R. 2260-2261.)

G. The Milwaukee & Northern Mortgages.

The Circuit Court of Appeals did not discuss these bond issues, but mentioned them in a general statement that more specific findings were necessary. (R. 2314.)

The Commission found:

> "The Northern first mortgage is secured by a lien on approximately 110 miles of wholly owned line and 16 miles of jointly owned line, lying between North Milwaukee and Green Bay, Wis., together with certain old cars. The consolidated mortgage is secured by a first lien on approximately 268 miles of line situated north of Green Bay, and by a second lien on the line south of that point." (R. 2168.)

The property subject to the lien of the Northern First Mortgage had an original cost of $4,235,832, cost of reproduction new, $5,163,026, cost of reproduction less depreciation, $3,533,265 and the value of its lands and rights is stated at $751,021. (R. 2248; I. C. C. Bur. of Valuation Report on Elements of Value, sheet 1.)

The property subject to the first lien of the Northern Consolidated Mortgage had an original cost of $9,025,562, cost of reproduction new, $10,855,672, cost of reproduction less depreciation, $7,932,597; and the value of its lands and rights is stated at $290,624. (R. 2251; I. C. C. Bur. of Valuation Report on Elements of Value, sheet 2.)

The Commission found that the analysis of the Northern's earnings for the 12 months ended September 30, 1933, and for the year 1934, showed earnings available for interest of $228,236 and $370,016, respectively, in those periods, as against total interest charges of $323,505 per annum. (R. 2248.) The estimate of 1936 earnings, which the Commission found was prepared partly on the basis of treating the Northern as a separate road and partly as part of the system, showed for the test year 1936, for the Northern lines as a whole, $495,182 income available for interest. (R. 2248, 2249.) It also showed the 1936 net earnings of other system lines from traffic interchanged with the Northern, namely, $524,915. (R. 2248.) The separation of the 1936 earnings of the Northern showed $411,633 income available from the First Mortgage line, as against interest of $95,265, and $83,549 as income available from the Consolidated Mortgage first lien line, as against $228,240 interest on the Consolidated bonds. (R. 2248-2249.) If the 1936 computations were placed on a strictly system basis, the earnings on the First Mortgage line would be reduced approximately $125,000. (R. 2249.) The interest on those bonds was earned three times over in 1936 even on the lower basis. (R. 2249.)

The Commission further found that the interest on the Consolidated bonds was earned about 1.2 times in 1936 if the excess of the First Mortgage earnings over interest be credited to the Consolidated Mortgage. (R. 2249.)

It stated that "From the evidence regarding the elements of value and earning power of the Northern first

mortgage lines we conclude that" the Northern first mortgage bondholders are entitled to receive 70% of their claim in new first mortgage 4% bonds and 30% in new general mortgage 4½% bonds, Series A. (R. 2249.)

Having regard at all times for the fact that it was dealing with relative rights the Commission further found that

> "on the basis of income available in 1936 for payment of interest, stated above, the Northern's consolidated mortgage bonds are on a parity with the general mortgage bonds." (R. 2251.)

Accordingly, it allotted identical treatment to the General Mortgage bonds and to the Northern Consolidated bonds. (R. 2251.)

H. The Terre Haute Lease.

The debtor is lessee of a line of railroad owned by the Chicago, Terre Haute & Southeastern Ry. Co. Without discussing the extensive findings appearing in the Commission's reports, the Circuit Court of Appeals held as follows:

> "It is quite impossible to approve of the disposition of the Terre Haute bond issues without having more specific findings. Whether this lease should not be now terminated presents a separate question, which can only be determined when findings are made." (R. 2314.)

The Terre Haute lease, which is for 999 years, was executed in 1921 to the debtor's predecessor. By the terms of the lease the debtor is liable both for interest ($1,023,580) and principal on the four issues of so-called Terre Haute bonds, together with an amount up to $12,000 yearly to pay Terre Haute corporate expenses, and is obligated to maintain Terre Haute equipment. (R. 2169.) The liabilities of the debtor for vacancies in performing this latter obligation were estimated at $5,000,000 as of June 30, 1935.

$6,832,556 as of December 31, 1936, and $7,106,149 as of December 31, 1937. (R. 2170.) The mileages subject to the liens of the respective Terre Haute mortgages were described by the Commission. (R. 2169-2170.)

The Commission found that the original cost of the Terre Haute property was $24,086,120, the cost of reproduction, $27,994,556, the cost of reproduction less depreciation, $19,357,027, and the value of lands and rights $1,323,087. (R. 2164, 2212.)

The Commission stated the estimated earnings of the Terre Haute for 1936 on both the so-called tariff rate basis for haul of company coal and other material, and on the cost of service basis. The respective amounts were $2,990,126 and $2,040,187. (R. 2212.) Similar amounts were stated for the years 1925, 1926, 1933 and 1934. (R. 2213.) The Commission found:

> "It may be safely concluded that the earning power of the Terre Haute is sufficient to cover all interest requirements, but this earning power is largely dependent on a continuation of the Milwaukee's coal traffic, together with the commercial coal traffic that accompanies it, and would be greatly diminished if such traffic ceased. The present arrangement is distinctly to the advantage of the Terre Haute." (R. 2213.)

The Commission discussed at length whether it had jurisdiction to deal with the Terre Haute lease by consolidating that road with the debtor and concluded it lacked that power. It then carefully considered and stated the necessity for reduction of fixed charges, and compared the security of the Terre Haute bondholders with that of other bondholders. (R. 2214-2216.) It concluded:

> "Under the circumstances, we shall approve as part of the plan, provisions for dealing with the Terre Haute bonds in a manner which bears a fair and equitable relationship to the treatment accorded the bondholders of the debtor, does not require a consolidation

> of the properties, and yet accords to the Terre Haute bondholders the same security under the existing mortgage, respectively, as their present bonds hold. However, these provisions, in order to become an effective part of the plan, will have to be accepted by substantially all of the Terre Haute bondholders." (R. 2216.)

The Commission provided that an offer be made to the Terre Haute bondholders for their voluntary acceptance. The principal terms of the offer are that the reorganized company will lease the Terre Haute line only if the interest rate on the Terre Haute bonds is modified, the maturities are extended, and the equipment vacancies are waived.[1] If the offer is not accepted, the lease is to be rejected. (R. 2216-2218.)

In its supplemental report, the Commission refused to increase the amount of fixed interest for Terre Haute bonds provided in the offer, and found that "no increase in the amount of future fixed charges should be permitted." (R. 1298.)

Also in the supplemental report, the Commission considered fully, and rejected, the proposal of the Terre Haute bondholders that the existing lease be assumed by the new company. After referring to the legal obstacle to consolidation, the Commission stated its conclusion, in part, as follows:

> "Despite this fact the Terre Haute is in practical effect a part of the Milwaukee system, its bondholders are essentially system creditors, and a disruption of the lines would be to the disadvantage of both companies. We have been and remain strongly of the opinion that the plan should provide some means for retaining the Terre Haute lines as a part of the system without unduly jeopardizing a successful reorganization of the Milwaukee. In harmony with this idea we

1. The Terre Haute bondholders would retain their bonds as modified (R. 2216, 1301), and not (as the court below stated) (R. 2305, 2314) receive bonds of the new company.

inserted in the plan the provisions outlined above, which were the best that we could devise in the public interest and as affording fair and equitable treatment to both the bondholders of the Terre Haute and those of the debtor." (R. 1303.)

"In the event of rejection there would seem to be no alternative but a rejection of the present lease, and the plan so provides. Such rejection is not intended as a threat. It is a necessary step in order that the processes of reorganization of the Milwaukee may not be thwarted. Without rejection of the lease the difficulties of effecting a reorganization, along the lines of the capital structure shown in the approved plan, are evident. * * * Under these circumstances we consider that there is no justification for the approval of a plan based upon the assumption by the new company of the lease, the guaranty of the Terre Haute income bonds, and the other obligations growing out of the lease." (R. 1303-1304.)

The Commission, therefore, after having considered the terms of the lease, the earning power of the line, its physical value and the relationship of the leased line to the other parts of the system, found that the continuation of the operation of this line as part of the system was desirable, upon proper lease terms, but that the terms of the present lease were too burdensome to permit their assumption by the reorganized company. It further found on the foregoing basis that a separation of the Terre Haute line from the system was not desirable if a new lease on the terms it found to be fair were to be accepted, and that rejection would be necessary if the offer of those terms was refused by the lessor's bondholders. We submit that the Circuit Court of Appeals was not justified in holding that further findings were necessary.

I. The Gary.

The Circuit Court of Appeals merely stated, as to the Gary, that more findings were necessary. (R. 2314.) There was no reference to the fact that the Commission had carefully considered the Gary in both of its reports in this case, and had made both specific and comprehensive findings regarding that property.

The Commission found that the Gary was projected as an outer belt line around the Chicago district, but only disconnected portions were built. (R. 1308, 1309.) These are joined by trackage rights over a competing line. (R. 1309.) The Commission's findings as to the onerous terms of this trackage agreement appear at R. 1309.

The original cost of the Gary property was $2,199,857, the cost of reproduction new $2,662,130, the cost of reproduction less depreciation, $1,795,017, and the value of lands and rights, $488,991. (R. 1311; I. C. C. Bur. of Valuation Rept. on Elements of Value, Sheet 2.)

In the six year period 1922-27, the Gary had an average yearly deficit of $58,908 before interest of $150,000 on its outstanding bonds. (R. 1309.) In 1928 and 1929 it earned $133,350 and $180,622, respectively, for that interest. (R. 1309.) After 1930, the Commission found that no separate records were kept, but that the estimates made on the basis described by the Commission showed that in 1933, 1934 and 1936 the property of the Gary earned for interest $142,000, $60,000 and $54,161, respectively. (R. 1309.)

The Commission discussed the fact that a substantial part of the freight movement over the Gary is "bridge traffic" which could have been moved, at the debtor's option, over other lines of the debtor. (R. 1310). It found that in 1928, for example, this bridge traffic produced revenues of $325,537, of which $108,839 came from commercial traffic and $216,698 from company material, whereas

in 1936 the commercial bridge traffic produced only $4,523 in revenues and the company material produced $222,912. (R. 1310.) The Commission stated and considered the evidence showing that if the bridge traffic had been routed over the other line of the debtor, the Gary would have had a deficit in 1936 of $45,816, before interest, and similar deficits of $5,187, $34,000, and $84,000 in 1928, 1933 and 1934, respectively. (R. 1310.) It further considered, however, the worth of the traffic contributed by the Gary to the debtor's system, and found that the 1936 revenues derived by the debtor from traffic originated, terminated, or interchanged with other lines at points on the Gary were $418,316, of which $307,285 was derived from traffic to or from Rockford, and $110,031 to or from all other stations on the Gary. (R. 1310.) It described the basis of the estimates of what the Gary produced for the system in 1936 ($48,933) and the similar estimates of $129,927 in 1928, $145,210 in 1929, $25,218 in 1933 and a deficit of $32,813 in 1934. (R. 1310-1311.)

The Commission then found:

> "It is apparent to us that the Gary property, split into three disconnected portions as it is, and so dependent upon the Elgin, Joliet & Eastern, a competing line, for the much restricted trackage rights described, has very limited earning power as a railroad. The property and facilities at Rockford, however, are fairly productive of revenues not only for the Gary property as such but also for the debtor's system, as above indicated." (R. 1311.)

Based on this finding, the Commission further found that the plan which it had originally approved should be modified in favor of the Gary as described at R. 1311. We believe the court erred in holding that any more findings as to the Gary were necessary.

Conclusion.

The foregoing findings and conclusions of the Commission were not discussed by the Circuit Court of Appeals. The nature of its error is indicated by two sentences at the end of the opinion:

> "The explicit holding of the Consolidated Rock Products case is so mandatory that further discussion is unnecessary. We can not accept the Commission's discussion of the evidence as a finding." (R. 2316.)

This may indicate that the court would have been satisfied if the Commission had prefaced each statement of fact or conclusion in its reports with the words "We find that * * *." The District Court did not find that the Commission's reports left any doubt as to the basis for its conclusions and we submit that none exists. This emphasis on form was certainly not intended by Congress when it brigaded the administrative activities of the Commission with the judicial functions of the courts.[1]

The theory of the Circuit Court of Appeals wholly misconceives the purposes of Section 77. It would make of the Interstate Commerce Commission, to whom the Congress entrusted the primary responsibility for railroad reorganizations in order to obtain the benefits of expert knowledge of technical matters, a mere fact finding agency charged with the duty of arranging and stating the facts so that not only the District Court but also the Circuit Court of Appeals might arrive at an independent conclusion on each of the many facts.

This Court has recently held:

> "It is not the province of a court to absorb the administrative functions to such an extent that the executive or legislative agencies become mere fact finding bodies deprived of the advantages of prompt and definite action." *Gray* v. *Powell*, No. 18, October Term, 1941, decided December 15, 1941.

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1. *Palmer* v. *Massachusetts*, 308 U. S. 79 (1939); *Warren* v. *Palmer*, 310 U. S. 132 (1940).

The Circuit Court of Appeals' conception of the function of the court would halt the reorganization proceedings while the plans were shuttled back and forth between the court and Commission, for the purpose of a listing of findings in the manner desired by the court as if, indeed, the Commission were a jury which should be compelled to answer special interrogatories in order to test the consistency of its conclusions with the statement of its reasons therefor. All this, too, in a case in which both lower courts have held that there is support in the evidence for the Commission's action. This Court has repeatedly held that administrative action may not be so stultified.

> "So long as there is warrant in the record for the judgment of the expert body it must stand . . . Having found that the record permitted the Commission to draw the conclusion that it did, a court travels beyond its province to express concurrence therewith as an original question. 'The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body.' *Mississippi Valley Barge Line Co.* v. *United States*, 292 U. S. 282, 286-287; *Swayne & Hoyt, Ltd.* v. *United States*, 300 U. S. 297, 303, *et seq.*" *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125, 145-46 (1939).

II.

THE DECISION BELOW CONFLICTS WITH THE CONSOLIDATED ROCK PRODUCTS CASE AND WOULD DEFEAT THE PURPOSE OF SECTION 77.

The Circuit Court of Appeals made it clear that its decision was thought to be required because of its interpretation of the opinion in *Consolidated Rock Products Co.* v. *Du Bois*, 312 U. S. 510 (1941). We believe that this represents a serious misconception (this brief, pp. 17-18), and that the lower court's opinion is, instead, in direct conflict with the decision in that case. The Court will recall that

the reorganization plan under consideration there involved a comparatively small holding company and its two subsidiaries, all three of which had securities in the hands of the public. No serious attempt had been made to determine the earning power of the entire enterprise or of any of its parts separately. There was some highly questionable evidence of "physical value", and the proof showed that there had been no net operating profit since 1929. There was left undetermined a very large claim asserted by the subsidiaries against the parent. Nevertheless, the District Court allowed the stockholders of the parent company to participate in the distribution of new securities. The fatal infirmity of the plan was not the form of the opinion of the District Court approving it, but rather the absence of the vital evidence necessary to sustain it. Indeed, the evidence before the Court was directly opposed to the action taken, and so far as appears there was not a single piece of evidence which supported the plan.

The *Rock Products* plan was rejected on two grounds. On the first, Mr. Justice Douglas said:

> "I. On this record no determination of the fairness of any plan of reorganization could be made. . . .
>
> "In the first place, there must be a determination of what assets are subject to the payment of the respective claims. This obvious requirement was not met." (312 U. S. at 520.)
>
> . . . It does not appear from this record that Union and Consumers have individual earnings records. If they do not, *some appropriate formula for at least an approximate ascertainment of their respective assets must be designed* in spite of the difficulties occasioned by the commingling. Otherwise the issue of fairness of any plan of reorganization as between Union and Consumers bondholders cannot be intelligently resolved.
>
> "In the second place, there is the question of the method of valuation. From this record it is apparent that little, if any, effort was made to value the whole

enterprise by *a capitalization of prospective earnings.*" (312 U. S. at 525.)

"* * * The criterion of earning capacity is the essential one if the enterprise is to be freed from the heavy hand of past errors, miscalculations or disaster, and if the allocation of securities among the various claimants is to be fair and equitable. *In re Wickwire Spencer Steel Co.*, 12 F. Supp. 528, 533; 2 Bonbright, Valuation of Property, pp. 870-881, 884-893. Since its application requires a prediction as to what will occur in the future, an estimate, as distinguished from mathematical certitude, is all that can be made. But that estimate must be based on an informed judgment which embraces all facts relevant to future earning capacity and hence to present worth, including, of course, the nature and condition of the properties, the past earnings record, and all circumstances which indicate whether or not that record is a reliable criterion of future performance. A sum of values based on physical factors and assigned to separate units of the property without regard to the earning capacity of the whole enterprise is plainly inadequate. See Finletter, The Law of Bankruptcy Reorganization, pp. 557, *et seq.* But hardly more than that was done here. The Circuit Court of Appeals correctly left the matter of a formal appraisal to the discretion of the District Court. *The extent and method of inquiry necessary for a valuation based on earning capacity are necessarily dependent on the facts of each case.*" (312 U. S. at 526-27.)

We have called attention to the completeness of the Commission's reports in this case. Its two reports show unmistakably that the Commission gave dominant weight to the earning capacity of the system and of its mortgage divisions, recognizing, as this Court later held, that "The criterion of earning capacity is the essential one." Based upon such evidence, the Commission made a "capitalization of prospective earnings" which was, we submit, an "informed judgment." Greater particularity could not have been expected by the Congress. In the quotation above,

this Court stated that "an estimate, as distinguished from mathematical certitude, is all that can be made." To state such estimates in the form of specific dollar valuations would give them the form and the pretense of precision which of necessity could not exist in fact. In examining a tax assessment in *N., C. & St. L. Ry.* v. *Browning*, 310 U. S. 362, 370 (1940) this Court held that:

> "• • • railroads, unlike farms and city lots and stocks and bonds, are not objects of exchange. The very notion of a 'full cash value' for a railroad is in many respects artificial. See 1 Bonbright, The Valuation of Property, pp. 511-632. Whatever may be the pretenses of exactitude in determining such a 'value,' to claim for it 'scientific' validity, is to employ the term in its loosest sense."

Similarly, this Court refused to search for any such "delusive certainty" in *U. S.* v. *Morgan*, 313 U. S. 409, 417 (1941), even though in that case the task of the administrative agency was less difficult than here.

The second ground for rejecting the *Rock Products* plan was that it clearly violated the rule of the *Boyd* case. The Court said:

> "• • • In the first place, no provision is made for the accrued interest on the bonds. This interest is entitled to the same priority as the principal. • • • In the second place, and apart from the cancellation of interest, the plan does not satisfy the fixed principle of the Boyd case even on the assumption that the enterprise as a whole is solvent in the bankruptcy sense. The bondholders for the principal amount of their 6% bonds receive an equal face amount of new 5% income bonds and preferred stock, while the preferred stockholders receive new common stock." (312 U. S. at 527.)

Neither of those errors occurred here. Accrued interest was fully provided for on all claims entitled to priority. The old stockholders were entirely excluded. Junior creditors were allowed to participate only to the extent that there was property available, carefully determined by the

Commission. The Commission made the necessary practical adjustments, and provided "a simple, conservative capital structure" (cf. 312 U. S. at 531). Indeed, it was primarily because of those features of the plan that the appeals below were taken.

Reorganization of a railroad the size of the Milwaukee is a highly complicated undertaking. Speaking of the reorganization of the Rock Island, a smaller system, this Court said:

> "In the reorganization of a great railroad system like that here concerned, these various steps call for a degree of consideration and an extent of detailed work almost beyond the power of appreciation." *Continental Bank* v. *Rock Island Ry.*, 294 U. S. 648, 679 (1935).

The Commission discharged its difficult duties with painstaking care. Its report is as clear and specific as it could reasonably have been made in a matter as complicated and extensive as this one.

The Commission found the elements of physical value for these divisions, stated and gave dominant weight to the results of the complicated earnings studies for the various divisions, considered the degree of interdependence of the divisions, and then stated its definitive judgment as to the values of the mortgage divisions in terms of the allocations of new securities. By so doing, it complied with the direction of Congress that it "state fully the reasons for its conclusions." (Section 77 (d).) It both effectuated the purposes of Congress and made an intelligent examination of its decision much easier than would have been the case if it had purported to resolve the many elements which entered into its final judgments in a single sum "value" for each of the several mortgage divisions. Certainly there is nothing in the *Consolidated Rock Products* decision to indicate that such a searching examination and evaluation of the different railroad divisions as was made

by the Commission in this case is fatally inadequate and that the Commission's conclusions, which have been held to be supported by the evidence, must be further supported by the statement of a single sum as the "value" of each division.

It is made entirely clear by the Commission's diligent but protracted and largely ineffectual effort to determine and report the final values of the railroads under Section 19(a) of the Interstate Commerce Act that such a requirement not only would defeat the purpose of the Congress to accomplish the prompt reorganization of bankrupt railroads, but would make the legislation impractical and substantially unworkable. The Commission here found and stated the values of the several mortgage properties in terms of earning power and of rights to future income rather than absolute values in terms of dollars and cents, and this, we submit, effectuates the intent of the statute.

III.

THE DECISION BELOW WOULD IMPOSE REQUIREMENTS ON ADMINISTRATIVE ACTION INCONSISTENT WITH THE STATUTE AND THE DECISIONS OF THIS COURT.

The Circuit Court of Appeals' rejection of the reports of the Commission as inadequate conflicts with the decisions of this Court on the nature and extent of findings necessary to sustain the conclusions of the Interstate Commerce Commission. The requirement of findings is a realistic and practical one, intended to effectuate the administrative process and not to frustrate it by demands which cannot be met. This Court has never held that an administrative determination must have the formal niceties of a pleading at common law. Accordingly, there is no requirement that the administrative body preface every one of the statements which constitute the basis

of its conclusions with the words "we find that * * *", or that it expressly negative every conceivable alternative course of action.

The court below did not cite a single case in which this Court was dealing with the form of report necessary to effectuate administrative action and it went far beyond the decisions on that subject in its requirement in respect to administrative findings. Unfortunately, the opinion below is not clear in defining the degree of detail expected, but the passing references to the necessity for findings on "uncontroverted" matters (R. 2309) and to findings on the Bellingham bonds (R. 2314)—which could not possibly affect the plan (see pages 27-28 of this brief) emphasize the requirements to which the court below would hold the Interstate Commerce Commission. The court did not state which part of Section 77 was violated by the form of the Commission's reports or what provision, if any, of the Constitution was not observed.

It is obvious that the findings which the court below would require were not deemed necessary to establish the jurisdiction of the Commission, which is clearly shown (R. 2155-56) and has never been questioned. Such decisions as *U. S. v. B. & O. R. Co.*, 293 U. S. 454 (1935), are therefore not pertinent here.

One of the five cases relied on below, the *Consolidated Rock Products* decision, has already been examined. The other cases relied upon have no bearing here. *Public Service Commission* v. *Wisconsin Tel. Co.*, 289 U. S. 67 (1933), reversed an interlocutory injunction against a state utility commission order entered *without any opinion or findings of fact by the trial court*. *Smith* v. *Illinois Bell Telephone Co.*, 282 U. S. 133 (1930), reversed the decision of the District Court which had enjoined the enforcement of a state commission's rate order. It did so on the ground that the lower court had

failed (1) to segregate intrastate property from interstate property although only intrastate rates were involved, (2) to make any findings on the cost of service furnished to the utility by its affiliated companies, the Western Electric Company and the American Telephone and Telegraph Company, (3) to determine what rate of depreciation was proper, and (4) to fix any rate of return. Not merely did the lower court fail to do those things for the year 1923, which was the first year involved in the litigation, but it failed to do so for any of the subsequent years in which conditions were admittedly changing. As in the *Consolidated Rock Products* case, the defect lay in the complete failure to consider evidence which the Court believed was vital and not in the form of the opinions of the lower court or of the administrative body. *U. S.* v. *Magnolia Petroleum Co.*, 276 U. S. 160 (1928), and *Universal Battery Co.* v. *U. S.*, 281 U. S. 580 (1930), are ordinary tax cases in which the trial court failed to pass upon the material facts determining liability. Not a single one of the decisions cited below involved the adequacy of a report by an administrative arm of Congress acting within the scope of a power conferred in broad terms.

In contrast, the constructive attitude of this Court toward findings of fact by administrative bodies is well shown in a series of three I. C. C. railroad rate cases. *Florida* v. *U. S.*, 282 U. S. 194 (1931), involved an order of the Commission raising rates on all shipments of logs in the State of Florida in order to prevent discrimination against interstate traffic. The Court pointed out that the only evidence before the Commission involved conditions in a section of the State of Florida with respect to interstate commerce which might come into existence but which did not exist in fact at that time. No proof of net revenues under any scale of rates had been attempted. Obviously the justification for so broad an order did not "clearly appear" (282 U. S. at 212).

A little later the Commission issued an order increasing interstate rates throughout the country on certain commodities because of the general economic situation. Subsequently the Commission ordered the corresponding intrastate rates raised by the same percentage in order to avoid discrimination. In *Louisiana* v. *U. S.*, 2 F. Supp. 545 (E. D. La., 1932), the latter order was held invalid on the strength of the *Florida* case on the theory that the Commission's failure to make a finding of fact as to each of the increased rates was fatal. But when that case came before the Supreme Court (290 U. S. 70), the Commission's action was upheld, the Court pointing out that it was unreasonable to require any such finding. The Court said:

> "It cannot be supposed that Congress, in placing this duty on the Commission, intended, in the absence of some express provision compelling it, that the Commission should follow a procedure which would preclude its acting effectively, if at all. That such was not its intention appears from the words of the statute. It does not, in terms, command the Commission to find that each rate prescribed under § 15a is just and reasonable, as prerequisite to a general increase in rates." (290 U. S. at 76.)
>
> "• • • The administrative difficulties which would preclude performance of the duty imposed by § 15a if the Commission were required to find that each individual rate prescribed is just and reasonable, would similarly prevent compliance with that under § 13(4). Since neither can be performed effectively without performance of the other, the standard of reasonableness to which the Commission must conform is necessarily the same under both, and that implies that under § 13(4), as under § 15a(2), reasonable latitude must be given for modification of particular rates found to be unreasonable." (290 U. S. at 78-79.)

Challenge was also made that the Commission had not found that revenues would be increased by the change in rates. The Court examined the entire opinion of the Com-

mission and, while not commending its form, found that, taken as a whole, the report showed

> "* * * the conclusion of the Commission, based upon supporting data, including estimates of experienced railroad traffic men, to which the report refers, that the probability of increased revenue was sufficiently great to make the increase of rates a reasonable exercise of sound managerial judgment. This, we think, meets the requirements of the statute." (290 U. S. at 80.)

After the Commission's order on Florida log rates was reversed in 282 U. S. 194, it conducted a new investigation and issued a second order fixing exactly the same rates as before. This order was likewise litigated in *Florida* v. *U. S.*, 292 U. S. 1 (1934), but with an entirely different result. The second order was supported by findings and evidence which the Court held to be sufficient. As to the findings, it answered the appellant's objections with words substantially applicable here:

> "The requirement of essential findings as to revenues did not demand an impracticable exactness. Losses through inadequate rates could be shown satisfactorily even though proof of the precise extent of such losses was not available. Reasonable determinations were required and these were made." (p. 9)

In all of these cases this Court required such findings as the conditions reasonably warranted and permitted, and interpreted that requirement in a practical manner consistent with the realities and the intent of the law to effectuate the administrative process. Compare also, Stone and Black, JJ., dissenting in *Interstate Circuit, Inc.* v. *U. S.*, 304 U. S. 55, 58 (1938). We submit that the action taken in this case, judged in the same spirit, is entirely valid.

Here, as in *Louisiana* v. *U. S., supra*, "It cannot be supposed that Congress * * * intended * * * that the Com-

mission should follow a procedure which would preclude its acting effectively, if at all" (p. 76). As this Court so clearly stated in *Palmer* v. *Massachusetts*, 308 U. S. 79 (1939), the Interstate Commerce Commission, acting under Section 77, is not a mere servant of the bankruptcy courts. The Commission must receive full cooperation from the courts if Section 77 is to become an effective statute.

CONCLUSION.

In the very first case which this Court decided under Section 77 it stressed the legislative intent that railroad reorganizations be consummated with all practicable expedition. *Continental Bank* v. *Rock Island Ry.*, 294 U. S. 648 (1935). The Milwaukee Road went into bankruptcy only a few months after that decision, and at least seven or eight years must now inevitably be consumed in its reorganization. Almost 20 months have elapsed since the Interstate Commerce Commission certified its plan of reorganization to the District Court, and 15 months since the District Court approved the plan. In this, as in other railroad reorganizations, the vast sums involved and the complexity of the mortgage structures have encouraged all junior claimants and some senior creditors to litigate to the bitter end every imaginable question of law and fact.

Never before in the long history of railroad bankruptcies have reorganizations been the subject of investigations which have been so searching and of consideration which has been so painstaking in their purpose to protect both public and private rights as those which the Commission has conducted under Section 77. This has been accomplished, however, at a cost in time and effort much greater than was involved in the equity practice, the evils of which Congress was seeking to remedy. To now hold that the Commission's plan representing many years of earnest work must go back to the Commission for further refine-

ment in matters of form, is, we believe, contrary to the statute and subversive of public and private interests.

The termination of this lengthy proceeding by a decision on the merits is a matter of great public importance. If, as we believe, the Commission's findings in this case are sufficient, we urge this Court to approve the certified plan rather than to remand the case to the Circuit Court of Appeals. Such a decision would have a very salutary effect upon the disposition of all of the other pending railroad reorganization cases. One of the most serious sources of delay in these reorganizations at the present time is the reluctance of some of the parties to assign adequate weight to the conclusions of the Interstate Commerce Commission. Uncertainty and expensive litigation will continue until this Court shall define the effect to be given to the Commission's findings and reports. Such a definition to be fully effective must, we believe, be made as a holding in a decision on the merits. This case, involving as it does virtually all of the usual obstructive contentions, presents an opportunity to make fully effective the remedial purpose of Section 77.

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APPENDIX.

The provisions of Section 77 (11 U. S. C. A. 205) most pertinent in this case are the following:

"(b) A plan of reorganization within the meaning of this section (1) shall include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise; (2) may include provisions modifying or altering the rights of stockholders generally, or of any class of them, either through the issuance of new securities of any character, or otherwise; (3) may include, for the purpose of preserving such interests of creditors and stockholders as are not otherwise provided for, provisions for the issuance to any such creditor or stockholder of options or warrants to receive, or to subscribe for, securities of the reorganized company in such amounts and upon such terms and conditions as may be set forth in the plan; (4) shall provide for fixed charges (including fixed interest on funded debt, interest on unfunded debt, amortization of discount on funded debt, and rent for leased railroads) in such an amount that, after due consideration of the probable prospective earnings of the property in light of its earnings, experience and all other relevant facts, there shall be adequate coverage of such fixed charges by the probable earnings available for the payment thereof; (5) shall provide adequate means for the execution of the plan, which may include the transfer of any interest in or control of all or any part of the property of the debtor to another corporation or corporations, the merger or consolidation of the debtor with another corporation or corporations, the retention of all or any part of the property by the debtor, the sale of all or any part of the property of the debtor either subject to or free from any lien at not less than a fair upset

price, the distribution of all or any assets or the proceeds derived from the sale thereof, among those having an interest therein, the satisfaction or modification of any liens, indentures, or other similar interests, the curing or waiver of defaults, the extension of maturity dates of outstanding securities, the reduction in principal and/or rate of interest and alteration of other terms of such securities, the amendment of the charter of the debtor, and/or the issuance of securities of either the debtor or any such other corporation or corporations for cash, or in exchange for existing securities, or in satisfaction of claims or rights or for other appropriate purposes; and may deal with all or any part of the property of the debtor; may reject contracts of the debtor which are executory in whole or in part, including unexpired leases; and may include any other appropriate provisions not inconsistent with this section.

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"(d) * * * After the filing of such a plan, the Commission, unless such plan shall be considered by it to be prima facie impracticable, shall, after due notice to all stockholders and creditors given in such manner as it shall determine, hold public hearings, at which opportunity shall be given to any interested party to be heard, and following which the Commission shall render a report and order in which it shall approve a plan, which may be different from any which has been proposed, that will in its opinion meet with the requirements of subsections (b) and (e) of this section, and will be compatible with the public interest; or it shall render a report and order in which it shall refuse to approve any plan. In such report the Commission shall state fully the reasons for its conclusions.

"The Commission may thereafter, upon petition for good cause shown filed within sixty days of the date of its order, and upon further hearings if the Commission shall deem necessary, in a supplemental report and order modify any plan which it has approved, stating the reasons for such modification. The Commission, if it approves a plan, shall thereupon certify the plan to the court together with a transcript of the proceedings before it and a copy of the report

and order approving the plan. No plan shall be approved or confirmed by the judge in any proceeding under this section unless the plan shall first have been approved by the Commission and certified to the court.

"(e) Upon the certification of a plan by the Commission to the court, the court shall give due notice to all parties in interest of the time within which such parties may file with the court their objections to such plan, and such parties shall file, within such time as may be fixed in said notice, detailed and specific objections in writing to the plan and their claims for equitable treatment. The judge shall, after notice in such manner as he may determine to the debtor, its trustee or trustees, stockholders, creditors, and the Commission, here all parties in interest in support of, and in opposition to, such objections to the plan and such claims for equitable treatment. After such hearing, and without any hearing if no objections are filed, the judge shall approve the plan if satisfied that: (1) It complies with the provisions of subsection (b) of this section, is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, and will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders; (2) the approximate amounts to be paid by the debtor, or by any corporation or corporations acquiring the debtor's assets, for expenses and fees incident to the reorganization, have been fully disclosed so far as they can be ascertained at the date of such hearing, are reasonable, are within such maximum limits as are fixed by the Commission, and are within such maximum limits to be subject to the approval of the judge; (3) the plan provides for the payment of all costs of administration and all other allowances made or to be made by the judge, except that allowances provided for in subsection (c), paragraph (12) of this section, may be paid in securities provided for in the plan if those entitled thereto will

accept such payment, and the judge is hereby given power to approve the same.

"If the judge shall not approve the plan, he shall file an opinion, stating his conclusions and the reason therefor, and he shall enter an order in which he may either dismiss the proceedings, or in his discretion and on motion of any party in interest refer the proceedings back to the Commission for further action, in which event he shall transmit to the Commission a copy of any evidence received. If the proceedings are referred back to the Commission, it shall proceed to a reconsideration of the proceedings under the provisions of subsection (d) of this section. If the judge shall approve the plan, he shall file an opinion, stating his conclusions and the reasons therefor, and enter an order to that effect, and shall send a certified copy of such opinion and order to the Commission. The plan shall then be submitted by the Commission to the creditors of each class whose claims have been filed and allowed in accordance with the requirements of subsection (c) of this section, and to the stockholders of each class, and/or to the committees or other representatives thereof, for acceptance or rejection, within such time as the Commission shall specify, together with the report or reports of the Commission thereon or such a summarization thereof as the Commission may approve, and the opinion and order of the judge: *Provided*, That submission to any class of stockholders shall not be necessary if the Commission shall have found, and the judge shall have affirmed the finding, (a) that at the time of the finding the corporation is insolvent, or that at the time of the finding the equity of such class of stockholders has no value, or that the plan provides for the payment in cash to such class of stockholders of an amount not less than the value of their equity, if any, or (b) that the interests of such class of stockholders will not be adversely and materially affected by the plan, or (c) that the debtor has pursuant to authorized corporate action accepted the plan and its stockholders are bound by such acceptance: *Provided further*, That submission to any class of creditors shall not be necessary if the Com-

mission shall have found, and the judge shall have affirmed the finding, that the interests of such class of creditors will not be adversely and materially affected by the plan, or that at the time of the finding the interests of such class of creditors have no value, or that the plan provides for the payment in cash to such class of creditors of an amount not less than the value of their interests. For the purpose of this section the acceptance or rejection by any creditor or stockholder shall be in writing, executed by him or by his duly authorized attorney, committee, or representative. If the United States of America, or any agency thereof, or any corporation (other than the Reconstruction Finance Corporation) the majority of the stock of which is owned by the United States of America, is a creditor or stockholder, the interests or claims thereof shall be deemed to be affected by the plan, and the President of the United States, or any officer or agency he may designate, is hereby authorized to act in respect of the interests or claims of the United States or of such agency or other corporation. The expense of such submission shall be certified by the Commission and shall be borne by the debtor's estate. The Commission shall certify to the judge the results of such submission.

"Upon receipt of such certification, the judge shall confirm the plan if satisfied that it has been accepted by or on behalf of creditors of each class to which submission is required under this subsection holding more than two-thirds in amount of the total of the allowed claims of such class which have been reported in said submission as voting on said plan, and by or on behalf of stockholders of each class to which submission is required under this subsection holding more than two-thirds of the stock of such class which has been reported in said submission as voting on said plan; and that such acceptances have not been made or procured by any means forbidden by law: *Provided*, That, if the plan has not been so accepted by the creditors and stockholders, the judge may nevertheless confirm the plan if he is satisfied and finds, after hearing, that it makes adequate provision for fair and equitable treatment

for the interests or claims of those rejecting it; that such rejection is not reasonably justified in the light of the respective rights and interests of those rejecting it and all the relevant facts; and that the plan conforms to the requirements of clauses (1) to (3), inclusive, of the first paragraph of this subsection (e): *Provided further*, That if, in any reorganization proceeding under this section, the United States is a creditor on claims for taxes or customs duties (whether or not the United States has any other interest in, or claim against, the debtor, as creditor or stockholder), no plan which does not provide for the payment thereof shall be confirmed by the judge except upon the acceptance, certified to the court, of a lesser amount by the President of the United States or the officer or agency designated by him pursuant to the provisions of the preceding paragraph hereof: *Provided further*, That if the President of the United States or such officer or agency shall fail to accept or reject such lesser amount for more than ninety days after receipt of written notice so to do from the court, accompanied by a certified copy of the plan, the consent of the United States insofar as its claims for taxes or customs duties are concerned shall be conclusively presumed. If the judge shall confirm the plan, he shall enter an order and file an opinion with a statement of his conclusions and his reasons therefor. If the judge shall not confirm the plan, he shall file an opinion, with a statement of his conclusions and his reasons therefor, and enter an order in which he shall either dismiss the proceedings, or, in his discretion and on the motion of any party in interest, refer the case back to the Commission for further proceedings, including the consideration of modifications of the plan or the proposal of new plans. In the event of such a reference back to the Commission, the proceedings with respect to any modified or new plan shall be governed by the provisions of this section in like manner as in an original proceeding hereunder.

"If it shall be necessary to determine the value of any property for any purpose under this section, the Commission shall determine such value and certify

the same to the court in its report on the plan. The value of any property used in railroad operation shall be determined on a basis which will give due consideration to the earning power of the property past, present, and prospective, and all other relevant facts. In determining such value only such effect shall be given to the present cost of reproduction new and less depreciation and original cost of the property, and the actual investment therein, as may be required under the law of the land, in light of its earning power and all other relevant facts."